

This sale has been duly ratified, and the controversy as to a portion of the proceeds of the sale is between Virgil B. Dalrymple, the father and personal representative of Agnes, and Taneyhill and wife, in right of the wife, who is her aunt and heir at law.

Arguments have been addressed to the court to prove that the land in question, whatever may have been the form of the proceeding, must be regarded as having been sold under the act of 1816, ch. 154, and that if so, it is quite immaterial in what character the proceeds may be viewed, whether they are still to be considered as real, or to have been absolutely converted into personal estate, their destination is the same, and they still shall go to those who would be entitled to the land as if no sale had been made, and this undoubtedly is the effect of the 9th section of the act referred to.

I am not, however, quite prepared to say that the sale in this case was made under the provisions of the act in question. The bill was unquestionably framed with a view to the 12th section of the act of 1785, ch. 72, and, indeed, when it was filed, the circumstances of the case were not such as to justify a proceeding under the act of 1816, which contemplates a proceeding where infants alone are concerned, nor was the machinery prescribed by the latter act taken in connection with the 2d section of the act of 1818, ch. 133, resorted to.

But be this as it may, there can, I think, be no impropriety, on the contrary, there is an evident fitness, in looking to the provision of the act of 1816, and other laws displaying the same policy, when we are seeking to adjust the conflicting equities of the personal representative and heir at law of one who has purchased or acquired by descent real estate. And, in a doubtful case, this policy, so conspicuously manifested by the legislature and pervading the law of descents at all times, would not be without its influence upon the mind of the court.

Looking, however, to the circumstances of this case, it does not appear to me to be necessary to seek for aid from considerations founded upon legislative policy, or to be derived from the rules prescribing the path of descent of real estate.